No. 17-50282

In the United States Court of Appeals for the Fifth Circuit

PLANNED PARENTHOOD OF GREATER TEXAS FAMILY PLANNING AND PREVENTATIVE HEALTH SERVICES, INC.; PLANNED PARENTHOOD SAN ANTONIO; PLANNED PARENTHOOD CAMERON COUNTY; PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER; PLANNED PARENTHOOD GULF COAST, INC.; JANE DOE #1; JANE DOE #2; JANE DOE #4; JANE DOE #7; JANE DOE #9; JANE DOE #10; AND JANE DOE #11,

Plaintiffs-Appellees,

v.

DR. COURTNEY PHILLIPS, IN HER OFFICIAL CAPACITY AS EXECUTIVE COMMISSIONER OF HHSC; AND SYLVIA HERNANDEZ KAUFFMAN, IN HER OFFICIAL CAPACITY AS ACTING INSPECTOR GENERAL OF HHSC,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division
Case No. 1:15-cv-01058-SS

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE OF SENATOR TED CRUZ AND SENATOR JOHN CORNYN IN SUPPORT OF DEFENDANTS-APPELLANTS

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940
jonathan@mitchell.law

Counsel for Amici Curiae

Senators Ted Cruz and John Cornyn respectfully seek leave to file an amici curiae brief supporting the defendants-appellants on rehearing en banc. All parties have consented to the filing of this brief.

The amici curiae are United States Senators who represent the State of Texas, and they have an interest in ensuring that the federal Medicaid Act is interpreted properly and that their State is not subjected to requirements that are not spelled out clearly and unambiguously in the statute. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

The amici brief will ask this Court to overrule *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017), not only because 42 U.S.C. § 1396a(a)(23)(A) is not privately enforceable, but also because section (23)(A) would permit State Medicaid programs to exclude Planned Parenthood even if section (23)(A) were privately enforceable. The amici urge the Court to issue alternative holdings because this case is likely to be reviewed by the Supreme Court, and it is possible that the Supreme Court will agree with *Gee*'s holding on the private-right-of-action issue.

Conclusion

The motion for leave to file the amici curiae brief should be granted.

Respectfully submitted.

Jonathan F. Mitchell
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940
jonathan@mitchell.law

Dated: March 15, 2019

Counsel for Amici Curiae

Certificate of Service

I certify that this document has been filed with the clerk of the court and served by ECF or e-mail on March 15, 2019, upon:

Kyle D. Hawkins
Heather Gebelin Hacker
Beth Klusmann
Andrew Stephens
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
kyle.hawkins@oag.texas.gov
(512) 936-1700 (phone)
(512) 474-2697 (fax)

Counsel for Defendants-Appellants

Jennifer Sandman
Roger K. Evans
Planned Parenthood Federation of America
123 William Street
New York, NY 10038
jennifer.sandman@ppfa.org
(212) 261-4584 (phone)

Alice J. Clapman
Planned Parenthood Federation of America
1110 Vermont Avenue, N.W., Suite 300
Washington, DC 20005
alice.clapman@ppfa.org
202-973-4862 (phone)
202-296-4800 (fax)

Counsel for Plaintiffs-Appellees

/s/ Jonathan F. Mitchell
Jonathan F. Mitchell
Counsel for Amici Curiae

No. 17-50282

In the United States Court of Appeals for the Fifth Circuit

PLANNED PARENTHOOD OF GREATER TEXAS FAMILY PLANNING AND PREVENTATIVE HEALTH SERVICES, INC.; PLANNED PARENTHOOD SAN ANTONIO; PLANNED PARENTHOOD CAMERON COUNTY; PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER; PLANNED PARENTHOOD GULF COAST, INC.; JANE DOE #1; JANE DOE #2; JANE DOE #4; JANE DOE #7; JANE DOE #9; JANE DOE #10; AND JANE DOE #11,

Plaintiffs-Appellees,

v.

DR. COURTNEY PHILLIPS, IN HER OFFICIAL CAPACITY AS EXECUTIVE COMMISSIONER OF HHSC; AND SYLVIA HERNANDEZ KAUFFMAN, IN HER OFFICIAL CAPACITY AS ACTING INSPECTOR GENERAL OF HHSC,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division
Case No. 1:15-cv-01058-SS

BRIEF OF SENATOR TED CRUZ AND SENATOR JOHN CORNYN AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940
jonathan@mitchell.law

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Interests of Amici Curiae

The amici curiae are United States Senators who represent the State of Texas. The amici have an interest in ensuring that the federal Medicaid Act is interpreted properly and that their State is not subjected to requirements that are not spelled out clearly and unambiguously in the statute. *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

Statement of Compliance with Rule 29

All parties have consented to the filing of this brief. No counsel for a party authored any part of this brief. And no one other than the amici curiae, their members, or their counsel contributed money that was intended to finance the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Conditions on the receipt of federal funds must be spelled out in clear and unambiguous statutory language. *See, e.g.*, *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) ("[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so *unambiguously*." (emphasis added)). *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017), failed to acknowledge this bedrock canon of statutory construction and interpreted vague and ambiguous language in the Medicaid Act to override the decisions of state officials, contravening a long line of Supreme Court decisions that require States to be given leeway in interpreting federal spending legislation. The Court should overrule *Gee*, and it should specifically hold that *Pennhurst* gives the States latitude to decide whether Planned Parenthood is "qualified" serve as a Medicaid provider within the meaning of 42 U.S.C. § 1396a(a)(23)(A).[1]

If the Court chooses to overrule *Gee* by rejecting a private right of action to enforce section (23)(A), then we respectfully urge the Court to issue an alternative holding and declare that State Medicaid programs may exclude Planned Parenthood even if section (23)(A) were privately enforceable. The private-right-of-action issue is likely to be reviewed by the Supreme Court given the circuit split that currently exists. *See Gee v. Planned Parenthood of Gulf Coast, Inc.*, 139 S. Ct. 408, 408–409 (2018) (Thomas, J., dissenting from

1. For simplicity and ease of exposition, we will refer to this statutory provision as "section 23(A)" throughout the brief.

the denial of certiorari). It is crucial that this Court affirm and preserve the prerogatives of state Medicaid officials in the event that the Supreme Court agrees with *Gee*'s holding on the private-right-of-action issue.

ARGUMENT

I. *Planned Parenthood v. Gee* Ignored *Pennhurst*'s Clear-Statement Rule

The Supreme Court has repeatedly and emphatically held that conditions on the receipt of federal funds must be spelled out in clear and unambiguous statutory language. *See Pennhurst*, 451 U.S. at 17 ("[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously."); *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) ("[W]e have required that if Congress desires to condition the States' receipt of federal funds, it 'must do so unambiguously . . . , enabl[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.'" (quoting *Pennhurst*, 451 U.S. at 17)); *Will v. Michigan Dep't of Police*, 491 U.S. 58, 65 (1989) ("Congress should make its intention 'clear and manifest' . . . if it intends to impose a condition on the grant of federal moneys" (citation omitted)); *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991) ("*Pennhurst* established a rule of statutory construction to be applied where statutory intent is ambiguous."); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) ("[W]hen Congress attaches conditions to a State's acceptance of federal funds, the conditions must be set out 'unambiguously'" (citation omitted)); *NFIB v. Sebelius*, 567 U.S. 519, 582–83 (2012) (opinion

of Roberts, C.J., joined by Breyer and Kagan, JJ.) ("[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." (citation and internal quotation marks omitted)); *id.* at 676 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting) ("[A]ny such conditions [on the receipt of federal funds] must be unambiguous so that a State at least knows what it is getting into.").

This Court has also held, entirely apart from *Pennhurst*, that provisions in the Medicaid Act cannot bind state officials unless they overcome "the presumption against preemption and its concomitant clear-statement rule." *Detgen v. Janek*, 752 F.3d 627, 631 (5th Cir. 2014); *see also id.* ("States have broad discretion to implement the Medicaid Act"). *Detgen*'s presumption against preemption supplies an additional clear-statement requirement, on top of the clear-statement rule already established in *Pennhurst*—and it gives States latitude to administer their Medicaid programs unless a federal statute "plainly prohibit[s]" the State's policy. *Id.* ("[W]e must affirm the summary judgment [for the State] if the statutory language does not *plainly prohibit* [the State's Medicaid policy]." (emphasis added)).

So when section 23(A) of the Medicaid Act says that beneficiaries may obtain assistance from any institution "qualified to perform the service or services required," the question to resolve is whether this language *unambiguously* precludes Texas from excluding the Planned Parenthood plaintiffs as Medicaid providers. *See* 42 U.S.C. § 1396a(a)(23)(A); *Pennhurst*, 451 U.S. at 17; *Detgen*, 752 F.3d at 631. The Medicaid Act never defines the word "qual-

ified," so the States have latitude under *Pennhurst* to interpret "qualified" in any reasonable or plausible manner—and the States may interpret "qualified" in a manner that differs from how a federal court would define that term. To admit that it is even *possible* to construe the word "qualified" to exclude the Planned Parenthood plaintiffs is to *require* a judgment for the State. *See Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991) ("*Pennhurst* established a rule of statutory construction to be applied where statutory intent is ambiguous.").

Gee did not mention or acknowledge *Pennhurst*'s clear-statement rule or *Detgen*'s presumption against preemption. But when this case is considered in light of *Pennhurst*'s clear-statement rule, Texas wins easily. The word "qualified" is ambiguous and undefined in the Medicaid Act—and the phrase "qualified to perform the service or services required" is equally ambiguous because it does not specify who determines the relevant "qualifications" or what those qualifications should be. This gives Texas latitude to determine who is "qualified" to provide medical services in partnership with the State. And Texas may conclude—for at least two independent reasons—that Planned Parenthood is not "qualified" within the meaning of section 23(A).

First, Texas may, consistent with *Pennhurst*, require "qualified" Medicaid providers to refrain from using tradenames and symbols linked to offensive or controversial ideologies when they administer a state-sponsored program. There is no doubt that a State could exclude Medicaid providers who

use tradenames linked to racism or eugenics; no different result should obtain when the provider's tradename is linked to other controversial ideologies that the State is unwilling to associate with.

Second, Texas may, consistent with *Pennhurst*, exclude the Planned Parenthood plaintiffs from the ranks of "qualified" providers because Planned Parenthood refused to contest the Inspector General's accusations of unethical conduct in the state administrative proceedings and defaulted on the appellate remedies that the State provided. The State may treat Planned Parenthood's decision to spurn these administrative remedies as a concession of guilt and as a stipulation that it is not "qualified" to participate in Medicaid. At the very least, the State may do so without contradicting any clear and unambiguous language in the Medicaid Act—and that is all that is needed for the State to prevail in this lawsuit.

A. Texas May, Consistent With *Pennhurst*, Interpret The Word "Qualified" To Exclude Providers Who Use Tradenames Or Symbols Associated With Offensive or Controversial Ideologies

The Medicaid Act permits States to disassociate from health-care providers who conduct their business under a tradename or symbol that is linked to offensive or controversial ideologies. If a would-be Medicaid provider names itself after the Hemlock Society, the John Birch Society, or the Washington Redskins, a State may decide that the provider is not "qualified" to administer a state-run social-welfare program, even if the entity provides first-rate medical care. Texas, for example, has long excluded the Ku Klux

Klan from its Adopt-a-Highway program—not because Texas doubts the Ku Klux Klan's ability to keep the highways clean, but because Texas is unwilling to lend its imprimatur to organizations that espouse racism. *See State of Texas v. Knights of the Ku Klux Klan*, 58 F.3d 1075 (5th Cir. 1995). A State may likewise decide that it will not partner with healthcare providers whose tradenames are linked to offensive or controversial ideologies, and that providers who insist on using such tradenames are not "qualified to perform" medical services within a state-run welfare program.

The name "Planned Parenthood" has become synonymous with an abortion-on-demand ideology that millions of Americans find abhorrent. The "Planned Parenthood" name has been further tainted by recently released videos that show employees and affiliates displaying cavalier attitudes toward abortion and discussing ethically questionable practices[2]—videos which prompted the organization's President, Cecile Richards, to publicly apologize for the "tone and statements" that were expressed.[3] And the "Planned

2. See https://www.youtube.com/watch?v=jjxwVuozMnU (video of Deborah Nucatola, Senior Director of Medical Services for Planned Parenthood Federation of America, boasting that "we've been very good at getting heart, lunch, liver, because we know that, so I'm not gonna crush that part, I'm going to basically crush below, I'm gonna crush above, and I'm gonna see if I can get it all intact.").
3. *See* https://www.youtube.com/watch?v=dZUjU4e4fUI (video of Cecile Richards acknowledging that "[i]n the video, one of our staff members speaks in a way that does not reflect that compassion. This is unacceptable, and I personally apologize for the staff member's tone and statements.").

Parenthood" name is inextricably connected to its founder Margaret Sanger, who uttered many controversial statements on race and eugenics.[4]

It is hardly surprising that the State of Texas would seek to disassociate itself from this baggage by refusing to allow entities to use the name "Planned Parenthood" while carrying out a state-run welfare program. Nor

4. See Glenn Kessler, Fact Checker, *Margaret Sanger, Planned Parenthood, and Black Abortions: Ben Carson's False Claim*, Washington Post (April 18, 2015) (acknowledging that "Sanger was a supporter of [the] now-discredited eugenics movement, which aimed to improve humans by either encouraging or discouraging reproduction based on genetic traits"); *id.* (acknowledging that Sanger "crafted a proposed law that included this provision: 'Feeble-minded persons, habitual congenital criminals, those afflicted with inheritable disease, and others found biologically unfit by authorities qualified judge should be sterilized or, in cases of doubt, should be so isolated as to prevent the perpetuation of their afflictions by breeding.' Sanger said she wanted 'to give certain dysgenic groups in our population their choice of segregation or sterilization,' which some have interpreted as a reference to concentration camps."); *id.* (acknowledging that "Sanger in 1938 appeared to speak positively about the German program undertaken by the Nazis"); *see also* Ellen Chesler, *Woman of Valor: Margaret Sanger and the Birth Control Movement in America* (1992) (acknowledging, in an otherwise positive biography of Margaret Sanger, that "[t]here is no denying that [Sanger] allowed herself to become caught up in the eugenic zeal of the day and occasionally used language open to far less laudable interpretations."). In fairness to Planned Parenthood, the organization has disavowed some of Sanger's controversial statements. *See* Glenn Kessler, *Herman Cain's Rewriting of Birth-Control History*, Washington Post (November 1, 2011) (quoting Veronica Byrd, Planned Parenthood's director of African American media, who acknowledged that "Margaret Sanger made statements some 80 years ago that were wrong then and are wrong now."). But that does not sever the association of the "Planned Parenthood" name with Margaret Sanger and the controversial beliefs that she espoused.

is it surprising that voters and taxpayers in Texas would be loath to allow their government to finance and partner with entities named after "Planned Parenthood," which lends the State's imprimatur to Planned Parenthood's abortion-on-demand ideology. A State may insist, consistent with *Pennhurst* and *Detgen*, that "qualified" Medicaid providers drop "Planned Parenthood" from their tradename—along with words or symbols linked to other offensive or controversial organizations or beliefs—before the State will allow those entities to administer a state-run healthcare program.[5]

Gee held that a State must deem a medical provider "qualified" whenever it is "capable of performing the needed medical services in a professionally competent, safe, legal, and ethical manner." *Gee*, 862 F.3d at 462. That is an untenable construction of the Medicaid Act. It would mean that a State is powerless to disqualify *any* Medicaid provider that insists on doing business under an offensive or controversial tradename—no matter how offensive or

5. Of course, Planned Parenthood has every right to advocate for legal abortion under the First Amendment—just as the Ku Klux Klan has a constitutional right to espouse racism and the Westboro Baptist Church has a constitutional right to picket military funerals and direct hateful messages toward homosexuals. *See Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Snyder v. Phelps*, 562 U.S. 443 (2011). But the constitutionally protected right to espouse offensive and controversial beliefs does not obligate a State to lend its imprimatur to those views. And it does not require a State to allow these organizations to use their controversial tradenames when acting in partnership with the State. *See, e.g.*, *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015) (holding that Texas may exclude the confederate battle flag from its specialty license-plate program).

controversial that tradename might be. Imagine if the Ku Klux Klan or the Westboro Baptist Church opened a clinic to serve Medicaid patients and insisted on including the name of their controversial organizations in the name of their clinic. A State has every right to disqualify a provider of that sort under section 23(A)—even if it provides excellent health care—because a provider is not "qualified" if it insists on administering a State's Medicaid program under a tradename that the State (or the State's taxpayers) are unwilling to associate with. The same goes for any other health-care providers whose tradenames are linked to offensive or controversial ideologies, including abortion, euthanasia, eugenics, racism, nativism, anti-Semitism, communism, or jihad. Under *Gee*'s interpretation of section 23(A), a Medicaid program could not exclude a provider that uses a name associated with any of these ideologies unless the State could find a deficiency in the health care that it provides.

More importantly, *Gee*'s construction of section 23(A) cannot be reconciled with *Pennhurst*'s clear-statement requirement. There is no clear and unambiguous language in section 23(A), or anywhere else in the Medicaid Act, that precludes a State's Medicaid plan from excluding providers who insist on using offensive or controversial tradenames when providing services to Medicaid beneficiaries. The word "qualified" is undefined in the Medicaid Act, and it is far too vague to *clearly* preclude a State from adopting a "qualification" of this sort. And the text and structure of the Medicaid Act

indicate that the States have authority to define their own "qualifications" for Medicaid providers. 42 U.S.C. § 1396a(p)(1) provides:

> *In addition to any other authority*, a State may exclude any individual or entity for purposes of participating under the State plan under this subchapter for any reason for which the Secretary could exclude the individual or entity from participation in a program under subchapter XVIII of this chapter under section 1320a-7, 1320a-7a, or 1395cc(b)(2) of this title.

42 U.S.C. § 1396a(p)(1) (emphasis added). This statute refers to the Secretary's authority to exclude providers from Medicaid under sections 1320a-7, 1320a-7a, and 1395cc(b)(2), which allow the Secretary to exclude providers who deliver substandard care or engage in illegal or unethical conduct.[6] Section 1396a(p)(1) allows State officials to exclude providers from Medicaid for these reasons, *as well as* for reasons provided under "*any other* authority," including state law. At the very least, this sweeping language in section 1396a(p)(1) is *capable* of being construed to permit States to establish their own state-law "qualifications" for Medicaid providers, and that is all that is needed under the clear-statement regimes of *Pennhurst* and *Detgen*.

6. *See* 42 U.S.C. § 1320a-7(b)(4) (allowing the Secretary to exclude "any individual or entity" who lost or surrendered their license for reasons related to "professional competence, professional performance, or financial integrity); 42 U.S.C. § 1320a-7(b)(5) (allowing the Secretary to exclude "any individual or entity" who was excluded from any federal or state health-care program "for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity").

B. Texas May, Consistent With *Pennhurst*, Interpret The Word "Qualified" To Exclude Providers Who Spurn Their Opportunities To Contest Accusations Of Wrongdoing In State Administrative Proceedings

When the Inspector General issued his "Final Notice of Termination," he explained the accusations and evidence against Planned Parenthood and the legal authorities supporting his decision. ROA.2414–16. But he also explained Planned Parenthood's right to appeal his termination decision to the state agency's appeals division:

> You may appeal this enrollment termination. **In order to do so, HHSC-IG must receive a written request from you asking for an administrative hearing before HHSC's appeals division on or before the 15th calendar day from the date you receive this notice**. 1 Tex. Admin. Code § 371.1703(f)(2). . . . Pursuant to 1 Tex. Admin. Code §§ 371. l 615(b)(2) and (4), any request for an administrative hearing must:
>
> 1. be sent by certified mail to the address specified above;
> 2. include a statement as to the specific issues, findings, and/or legal authority in the notice letter with which you disagree;
> 3. state the bases for your contention that the specific issues or findings and conclusions of HHSC-IG are incorrect;
> 4. be signed by you or your attorney; and
> 5. arrive at the address specified above on or before the 15th calendar day from the date you receive this Final Notice of Termination.
>
> **IF HHSC-IG DOES NOT RECEIVE A WRITTEN RESPONSE TO THIS NOTICE WITHIN 15 CALENDAR DAYS FROM THE DATE YOU RECEIVE IT, YOUR FINAL NOTICE OF TERMINATION WILL BE UNAPPEALABLE**.

ROA.2417 (emphasis in original). Planned Parenthood responded by waiving its right to appeal and refusing to contest the Inspector General's accusa-

tions before the state's Health and Human Services Commission. Texas may treat Planned Parenthood's insouciance toward the Inspector General's findings—and its refusal to use the appellate remedies that the State provided—as a no-contest plea and an effective admission of guilt.

Of course, one need not exhaust state administrative remedies before suing under 42 U.S.C. § 1983. *See Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496 (1982). But the issue here is not whether exhaustion is a prerequisite to suit. It is whether Texas may interpret section 23(A) of the Medicaid Act to exclude providers that refuse to contest its Inspector General's accusations of wrongdoing in the forum that the State provides, and who spurn the appellate remedies that the State provides to challenge an Inspector General's determinations.[7] There is no clear or unambiguous statement in the Medicaid Act that precludes Texas from interpreting the word "qualified" to exclude providers of this sort. *See Pennhurst*, 451 U.S. at 17; *Detgen*, 752 F.3d at 631.

7. And in all events, Planned Parenthood does not even have a cause of action under section 1983, because the federally protected "rights" that *Gee* found in section 23(A) belong to Medicaid beneficiaries, not to Medicaid providers. *See Gee*, 862 F.3d at 460 ("The statute speaks only in terms of recipients' rights rather than providers' rights, so the right guaranteed by § 1396a(a)(23) is vested in Medicaid recipients rather than providers. Providers like PPGC cannot bring a challenge pursuant to § 1396a(a)(23)."). Only the Medicaid *beneficiaries* have a possible claim under section 1983, and no one is suggesting that the *beneficiaries* were required to exhaust state administrative remedies before bringing suit.

Conclusion

The preliminary-injunction order should be vacated, and the case remanded with instructions to enter judgment for the defendants.

Respectfully submitted.

Jonathan F. Mitchell
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940
jonathan@mitchell.law

Dated: March 14, 2019

Counsel for Amici Curiae

Certificate of Service

I certify that this document has been filed with the clerk of the court and served by ECF or e-mail on March 14, 2019, upon:

Kyle D. Hawkins
Heather Gebelin Hacker
Beth Klusmann
Andrew Stephens
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
kyle.hawkins@oag.texas.gov
(512) 936-1700 (phone)
(512) 474-2697 (fax)

Counsel for Defendants-Appellants

Jennifer Sandman
Roger K. Evans
Planned Parenthood Federation of America
123 William Street
New York, NY 10038
jennifer.sandman@ppfa.org
(212) 261-4584 (phone)

Alice J. Clapman
Planned Parenthood Federation of America
1110 Vermont Avenue, N.W., Suite 300
Washington, DC 20005
alice.clapman@ppfa.org
202-973-4862 (phone)
202-296-4800 (fax)

Counsel for Plaintiffs-Appellees

/s/ Jonathan F. Mitchell
Jonathan F. Mitchell
Counsel for Amici Curiae

Certificate of Electronic Compliance

I certify that on March 14, 2019, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the U.S. Court of Appeals for the Fifth Circuit, through the court's CM/ECF document-filing system, https://ecf.ca5.uscourts.gov/.

I further certify that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

/s/ Jonathan F. Mitchell
Jonathan F. Mitchell
Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

with type-volume limitation, typeface requirements,
and type-style requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

[X] this brief contains 3,209 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

[ ] this brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

[X] this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac, version 16.22 in Equity Text B 14-point type face, or

[ ] this brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Amici Curiae

Dated: March 14, 2019